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AIR POLLUTION

Calif., enviros sue EPA for scrapping Clinton policy

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California officials have joined environmental groups in suing to stymie the Trump administration's decision to scrap a long-standing EPA policy intended to limit industrial pollution.

"Instead of prioritizing the health of hardworking Americans, EPA Administrator Scott Pruitt wants to let major polluters off the hook," California Attorney General Xavier Becerra (D) said in a [news release](#) yesterday announcing the lawsuit challenging repeal of the "once in, always in" policy. "That is unconscionable, and it is illegal."

The suit was filed by Becerra and the California Air Resources Board with the U.S. Court of Appeals for the District of Columbia Circuit.

The state wants the court to block the policy repeal both "because it contravenes the intent of Congress expressed in the Clean Air Act and it constitutes an arbitrary and capricious reversal of the agency's position," according to the release.

An EPA spokeswoman declined to comment this morning on pending litigation.

The once in, always in policy, dating back to 1995, applied to factories and other "major" industrial pollution sources covered by maximum achievable control technology (MACT) emissions standards because they annually released at least 10 tons of a single air toxic or 25 tons of any combination of hazardous pollutants.

Under that framework, the MACT standards stayed in place even if a plant's emissions dropped below those thresholds on the grounds that polluters could otherwise backslide.

But in a January [memo](#), released with no advance notice, EPA air chief Bill Wehrum scrapped the policy on the grounds that it ran contrary to the "plain language" of the Clean Air Act, which distinguishes between "major" sources and smaller "area" sources.

While Wehrum wrote that EPA expected to soon publish a *Federal Register* notice seeking public feedback on new regulatory text to reflect EPA's "plain language reading" on that score, the agency has yet to do so.

California Communities Against Toxics and a half-dozen other environmental groups had already sued late last month to overturn Wehrum's decision ([Greenwire](#), March 26).

In a sign of the potential stakes, two industry trade groups — the Air Permitting Forum and the Auto Industry Forum — are now seeking to [intervene](#) in that suit on the grounds that their members face a "substantial" impact from the outcome.

In the memo, Wehrum predicted that revocation would lighten the regulatory burden on industries and states while continuing to ensure stringent controls on releases of hazardous air pollutants.

Environmental groups dispute that assessment, saying that emissions could spike as businesses scale back on their use of pollution controls to save money. Based on a sample of a dozen chemical plants and other facilities, such emissions could more than quadruple, the Environmental Integrity Project predicted last month.

In the heavily industrialized Houston-Galveston area, emissions of benzene, formaldehyde and other pollutants from 18 plants potentially affected by the policy's repeal could soar almost 146 percent — from 183 tons to 450 tons — over 2014 levels, the Environmental Defense Fund concluded in an [analysis](#) released yesterday.

While the analysis's estimates are subject to "important uncertainties," the group wrote, they indicated that the policy's repeal "could apply to a large number of facilities and result in dramatic increases in some of the most dangerous known air pollutants."

Wehrum had ended the policy soon after a request from two Republican senators. Last month, more than a dozen Democratic lawmakers asked Pruitt to reinstate it; they also sought all analyses and modeling of the potential effects of repeal ([E&E News PM](#), March 14).



Haze obscures the Houston skyline. University of Texas/NOAA Earth System Research Laboratory

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